

United States District Court
Eastern District of North Carolina
Western Division

5:21-CT-3050

Case No. _____

(To be filled out by Clerk's Office only)

Colton Wade Rickels

Inmate Number 13932-029

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

COMPLAINT

(Pro Se Prisoner)

Jury Demand?

☒ Yes

☐ No

D. Lev, Warden

T. Kilpatrick, AUSA

D. Davis, AUSA

B. McClure, Nurse - PA

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Section IV. Do not include addresses here.)

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

I. COMPLAINT

Indicate below the federal legal basis for your claim, if known. This form is designed primarily for pro se prisoners challenging the constitutionality of their conditions of confinement, claims which are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "Bivens" action (against federal defendants).

- ☐ 42 U.S.C. § 1983 (state, county, or municipal defendants)
- ☒ Action under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971) (federal defendants)
- ☐ Action under Federal Tort Claims Act (United States is the proper defendant; must have presented claim in writing to the appropriate Federal agency and received a notice of final denial of the claim pursuant to 28 U.S.C. § 2401(b))

II. PLAINTIFF INFORMATION

Colton Rickels

Name

13932-029

Prisoner ID #

Butner Medium 2, FCI

Place of Detention

P.O. Box 1500

Institutional Address

Butner

City

NC

State

27509

Zip Code

III. PRISONER STATUS

Indicate whether you are a prisoner or other confined person as follows:

- ☐ Pretrial detainee ☐ State ☐ Federal
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☐ Convicted and sentenced state prisoner
- ☒ Convicted and sentenced federal prisoner

IV. DEFENDANT(S) INFORMATION

Please list the following information for each defendant. If the correct information is not provided, it could result in the delay or prevention of service. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant 1: D. Lev
Name
Warden At F.C.I. 2 Medium
Current Job Title
FMC Butner, 1000 old Hwy NC 75
Current Work Address
Butner NC 27509
City State Zip Code
Capacity in which being sued: ☐ Individual ☐ Official ☒ Both

Defendant 2: T. Kilpatrick
Name
A.H.S.A., At F.C.I. 2 Medium
Current Job Title
FMC 1000 old Hwy NC 75
Current Work Address
Butner NC 27509
City State Zip Code
Capacity in which being sued: ☐ Individual ☐ Official ☒ Both

Defendant(s) Continued

Defendant 3: D. Davis
Name
A.F.S.A. at F.C.I. 2 Medium
Current Job Title
EMC Butner, 1000 old Hwy NC 75
Current Work Address
Butner NC 27509
City State Zip Code

Capacity in which being sued: ☐ Individual ☐ Official ☒ Both

Defendant 4: Bobby McClure
Name
Nurse/PA F.C.I. 2 Medium
Current Job Title
EMC Butner, 1000 old Hwy NC 75
Current Work Address
Butner NC 27509
City State Zip Code

Capacity in which being sued: ☐ Individual ☐ Official ☒ Both

V. STATEMENT OF CLAIM

Place(s) of occurrence: FCC, Medium 2

Date(s) of occurrence: 4-1-2020 thru 6-16-2020

State which of your federal constitutional or federal statutory rights have been violated:

Eighth Amendment

State here briefly the FACTS that support your case. Describe how each defendant was personally involved in the alleged wrongful actions, state whether you were physically injured as a result of those actions, and if so, state your injury and what medical attention was provided to you.

FACTS:

Who
did what to
you?

The warden D. Lev, refused all special diets to be served on lock down as of March 1, 2020. The A.S.E.A. Davis told me that I as an inmate don't have any Constitutional rights, and he does not care if I get my wheat free & Gluten Free Meal that was ordered and prescribed by a dietitian even while on lock-down.

The F.S.A. is allowing as of January 24th, 2021 that my trays being delivered to each cell due to Covid-19 so I cannot check my food before it leaves food service, prepared by another inmate.

The H.S.A. Ms. Cathy Carlock has not even tried to fix the issues with my food.

The dietitians of the F.M.C. failed to resolve the issues at hand as of January 31, 2021.

What
happened
to you?

Constantly getting food with wheat as a ingredients in the food, I'm constantly breaking out in the face, ears, back, legs, arms, and chest with big sores that become infected, and I'm itching constantly. I also have trouble breathing, my itching constantly becomes extreme painful due to all the sores from the wheat allergies. The institution continues only serve preboxed, bread, crackers, cookies, that contains wheat. I don't get the adequate portions of food per meal that is required, was refused my diet for 86 days in a row and was forced to eat the provided food, The latest food I'm not suppose to eat was given to me January 31, 2021.

When did it
happen to
you?

The first time was March 1st, 2020 6:30 AM and the latest day was January 31, 2021 and continuously happens every meal pretty much.

Where did it
happen to
you?

At Butner medium after being placed on the diet on February 19, 2020 11:55 AM, and on April 1, 2020 I was refused my special diet in SHU By the Warden LeU at F.C.I. 2, cell 594 through the food slot, It continues even to date in lock down in General population due to Covid-19.

What was
your
injury?

I Break out all over body causing scare tissue, I
itch all over causing even more sores from scratching
and a lot of the sores get infected, it causes me to
lose my breath and takes a long time to properly
breathe again, due to me having asthma that wheat
affects. I get dizzy and headaches from the smell
of wheat. Medical refuses to give me any
medications to assist with my medical
issues.

I have to ask family for money to be able
to buy stuff from commissary to eat for
fear of getting a blood disorder, due to all
my allergy sores. Because of my medical
condition I have had to spend \$1404.25
to be able to eat properly for the last 10 months.
most since the Covid-19 lock down.

I am suffering cruel and unusual punishment
and suffering from pain and discomfort
and it also affect my psychological
mind frame and causing me stress and
depression from all the actions and neglect
of the defendants.

VI. ADMINISTRATIVE PROCEDURES

WARNING: Prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions. 42 U.S.C. § 1997e(a). Your case may be dismissed if you have not exhausted your administrative remedies.

Have you filed a grievance concerning the facts relating to this complaint? ☒ Yes ☐ No

If no, explain why not:

N/A

Is the grievance process completed?

☒ Yes ☐ No

If no, explain why not:

N/A

VII. RELIEF

State briefly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

Award Compensator damages in the Amount of \$50,000 from each defendant.

Punitive damages from defendants \$250,000 jointly and severally.

Any other relief this Honorable Court deems just and Equitable

VIII. PRISONER'S LITIGATION HISTORY

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in forma pauperis in federal court if that prisoner has "on three or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. §1915(g).

Have you brought any other lawsuits in state or federal court while a prisoner?

☐ Yes ☒ No

If yes, how many?

N/A

Number each different lawsuit below and include the following:

- Name of case (including defendants' names), court, and docket number
- Nature of claim made
- How did it end? (For example, if it was dismissed, appealed, or is still pending, explain below.)

N/A

IX. PLAINTIFF'S DECLARATION AND WARNING

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint and provide prison identification number and prison address.

2-1-2021
Dated

Colton Rickels
Plaintiff's Signature

Colton Rickels
Printed Name

13932-029
Prison Identification #

FCC, med II

P.O. Box 1500 Butner NC 27509
Prison Address City State Zip Code